ADDITIONAL DISSENTING VIEWS
on H.R. 975

In addition to the concerns raised in the general dissenting views, we are disappointed by the committee's refusal to put an end to one of the most notorious abuses of the bankruptcy system--the ``financial planning'' strategy by which debtors purchase expensive homes in states which allow an unlimited homestead exemption under 11 U.S.C. 522 (b) (2) (A), declare bankruptcy, and continue to enjoy a life of luxury while their creditors get little or nothing. [1]

During the committee markup, Mr. Delahunt offered an amendment to eliminate this abuse--and implement a key recommendation of the National Bankruptcy Review Commission -- by retaining the $125,000 national cap on the homestead exemption, as provided under the bill, while striking the exceptions and loopholes to the cap contained in the current bill.

The amendment would have helped to eliminate the biggest loophole in the Bankruptcy Code, and implement a key recommendation of the National Bankruptcy Review Commission, by placing a meaningful national cap on the homestead exemption.

The amendment would have made the cap meaningful because, in the bill as reported, the $125,000 cap is qualified by a series of exemptions that assure that those who engage in flagrant abuse of the bankruptcy system by sheltering homestead assets can continue to do so.

The Delahunt amendment, which was rejected on a party line vote by the Committee, would leave the cap at $125,000, but eliminate the exemptions for transactions conducted more than 1215 days (roughly three years) preceding the bankruptcy filing and for interests transferred from a debtor's previous principal residence acquired within the same state prior to that time.

The rationale that has been given for the so-called "needs-based" reforms proposed in H.R. 975 is to eliminate abuses of the bankruptcy laws-abuses which proponents of the legislation have characterized as the use of the Bankruptcy Code as a "financial planning tool."

Yet while the bill would presume that debtors of modest means are abusing the system if they can pay general unsecured creditors as little as $100 a month in chapter 13, it continues to permit, indeed it endorses-the most notorious abuse of the consumer bankruptcy system of all.

If we are truly serious about curtailing abuses, this is the place to start, with individuals like Marvin Warner, a former ambassador to Switzerland and the owner of a failed Ohio Savings

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[1]The following are the states have unlimited homestead exemptions: Florida, Iowa, Kansas, South Dakota, Texas, and the District of Colombia.

& Loan, who paid off only a fraction of $300 million in bankruptcy claims while keeping his multi-million-dollar horse ranch near Ocala, Florida.[2]

Or Martin A. Siegel, a former Wall Street investment banker convicted of insider trading. While facing a $2.75 billion civil suit, he bought a $3.25 million, 7,000-square-foot beachfront home in Ponte Vedra Beach.[3]

Or former baseball commissioner Bowie Kuhn, whose Manhattan law firm went into bankruptcy. After creditors seized his weekend house in the Hamptons and were about to attach his $1.2 million home in Ridgewood, New Jersey, Kuhn acquired a million-dollar house in Florida with five bedrooms and five baths[4]

Or Dr. Carlos Garcia-Rivera, a Miami physician with no malpractice insurance, who was named in four separate malpractice actions, filed for bankruptcy protection, and kept a $500,000 home with a 100-foot swimming pool.[5]

Or the Dallas developer, Talmadge Wayne Tinsley, who filed under chapter 7 after incurring $60 million in debts. Tinsley objected to the Texas law that permitted him to keep only one acre of his $3.5 million, 3.1-acre magnolia-lined estate. But that acre included a five-bedroom, six-and-a-half-bath mansion with two studies, a pool and a guest house.[6]

Or the movie actor, Burt Reynolds, who declared bankruptcy in 1996, claiming more than $10 million in debt. Reynolds kept a $2.5 million home--appropriately named ``Valhalla"--while his creditors received 20 cents on the dollar.[7]

Or Paul Bilzerian, who used Florida's unlimited homestead exemption to avoid his creditors. He filed for bankruptcy in 1991, and filed again last month. He retains his $5 million

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[2]Larry Rohter, "Rich Debtors Finding Shelter Under a Populist Florida Law," *N.Y. Times* A-1 (July 25, 1993).

[3]*Id.*

[4]*Id.*

[5]David J. Morrow, "Key to a Cozier Bankruptcy: Location, Location, Location," *N.Y. Times* , A-1 (Jan. 7, 1998).

[6]*Id.*

[7]Eliot Kleinberg, "Reynolds Gets Out from under Bankruptcy," *The Palm Beach Post* , (Oct. 8, 1998)

Florida home, and can completely avoid the $200 million in debt owed his creditors, including the IRS.[8]

The situation in Florida has become so notorious that one Miami bankruptcy judge told the New York Times, ``You could shelter the Taj Mahal in this state and no one could do anything about it."[9] As the Wall Street Journal noted recently concerning the Kuhn case, ``the bill that Congress will soon send to a welcoming President Bush would make [pre-bankruptcy planning using the unlimited homestead exemption] more difficult, but that's symbolic. Few people anticipating bankruptcy have the cash to pull off that maneuver. This is a national problem that demands a uniform solution. Without a nationwide cap, debtors who live in the 45 states that cap the exemption at $200,000 or less are free to relocate to one of the five so-called ``debtors' paradises'' that have no cap at all."[10] Indeed, the Florida Supreme Court has ruled that even fraudulent transfers are protected by the unlimited homestead exemption under that state's constitution.[11]

The sponsors of the bill will claim that they have closed the loophole, first, by applying the cap to property purchased within the 1215-day period prior to the filing; second, by requiring the individual to wait for 730 days after moving from another state before claiming the new state's exemption; and third, by disallowing the claim on any portion of the homestead acquired "with the intent to hinder, delay, or defraud a creditor."

While these features may eliminate a few of the abuses, they do not solve the problem. Wealthy debtors who are sophisticated enough to plan ahead-and those are, after all, the people we are talking about-can purchase a homestead to shelter their non-exempt assets and simply wait the 1215 days before filing their petition. And the bill expressly permits them to transfer their assets from a previous principal residence into a new one at any time prior to their bankruptcy filing without being subject to the cap, provided that the former residence is located in the same state.

What message does it send when Congress subjects middle-class debtors to a means test while permitting the wealthy to continue to place their millions out of reach of their creditors? A bill that does that is not a "Bankruptcy Abuse Prevention and Consumer Protection Act" at all. If Congress is serious about curbing abuse, a national, absolute dollar amount cap, without any

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[8] *Hearing Before the Senate Committee on the Judiciary on S. 220*, (Written statement of Brady C. Williamson), at 6 (Feb. 8, 2001).

[9] Judge A. Jay Cristol, quoted in Rohter, supra note 2.

[10] David Wessel, "A Law's Muddled Course," *The Wall Street Journal*, at 1 (Feb. 22, 2001).

[11] *Havoco of America, Ltd. v. Hill*, No. SC 99-98 (June 21, 2001).

loopholes, is the only way to do it. The bill, as reported, fails this test and so bears the burden of treating poor and middle class families harshly while letting the wealthiest individuals, who are clearly abusing the system and defrauding their creditors, shelter millions of dollars.

Bankruptcy should provide a safety net for families truly in need of relief. This legislation, which imposes stringent new rules on financially distressed families should not leave the most notorious loophole – the "millionaire's loophole" – intact.

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